

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In re: Bair Hugger Forced Air Warming
Products Liability Litigation

MDL No. 2666
(JNE/DTS)

This Document Relates to All Actions

**PLAINTIFFS' SUPPLEMENT TO THE
FACTUAL RECORD IN OPPOSITION
TO DEFENDANTS' MOTION FOR
PERMANENT INJUNCTION**

Plaintiffs, by and through their undersigned counsel, hereby move to supplement the factual record supporting Plaintiffs' Opposition to Defendants' Motion for Permanent Injunction Barring Plaintiff John Petitta from Relitigating his Claims in State Court (Doc. 2001) with recently produced documents detailing additional correspondence between defense counsel and counsel for Plaintiff John Pettita regarding his federal lawsuit against 3M in the Bair Hugger MDL and Mr. Petitta's then pending lawsuit in Texas State Court.¹ Due to the Defendants' Motion for a Permanent Injunction (Doc. 1939), Plaintiff's counsel in the *Petitta v. 3M Co.*, matter pending in Hidalgo County, Texas, served discovery requesting production of "all correspondence between 3M or its counsel and all prior or current counsel for Plaintiff regarding the Federal MDL lawsuit filed by Mr. Petitta."²

On July 8, 2019, 3M produced an email thread between its counsel and counsel for

¹ Exhibit 1, Defendants' Response to Plaintiff's Third Set of Requests for Production, p. 1.

² *Id.*

Mr. Petitta.³ The email discussion thread was not made an exhibit to the briefing on 3M's pending motion for permanent injunction filed in this Court or the briefing filed in the District Court of Hidalgo County Texas, 92nd Judicial District.⁴ Undersigned counsel didn't have a copy of the email thread, and Defendants neglected to produce a copy with their Motion. The email discussion thread shows that 3M acted in bad faith by raising the *res judicata* issue under false pretense, and explicitly shows that both parties (3M and counsel for Mr. Petitta) intended to move forward with the stipulation of dismissal of the MDL lawsuit and instead pursue the concurrently and then pending state court action.

Plaintiffs respectfully request that this Court allow supplementation of the factual record supporting our opposition to Defendants' motion with the above-named documents, as the documents are relevant to the Motion currently pending before this Court with respect to *res judicata* and whether the Petitta MDL case was ever decided on the merits.

Respectfully submitted,

Dated: August 2, 2019

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³ Ex. 2 (email thread)

⁴ *Id.* at p. 1-2

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